

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Office of Health Policy

3 (Amendment)

4 900 KAR 5:020. State Health Plan for facilities and services.

5 RELATES TO: KRS 216B.010-216B.130

6 STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28),  
7 216B.040(2)(a)2.a

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires  
9 the cabinet to promulgate an administrative regulation, updated annually, to establish  
10 the State Health Plan. The State Health Plan is a critical element of the certificate of  
11 need process for which the cabinet is given responsibility in KRS Chapter 216B. This  
12 administrative regulation establishes the State Health Plan for facilities and services.

13 Section 1. The 2015-2017 [~~2013-2015~~] State Health Plan shall be used to:

14 (1) Review a certificate of need application pursuant to KRS 216B.040; and

15 (2) Determine whether a substantial change to a health service has occurred  
16 pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

17 Section 2. Incorporation by Reference. (1) The “2015 - 2017 [~~2013-2015~~] State  
18 Health Plan”, May 2015 [~~August 2013~~], is incorporated by reference.

19 (2) This material may be inspected, copied, or obtained, subject to applicable  
20 copyright law, at the Office of Health Policy, 275 East Main Street, 4WE, Frankfort,  
21 Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

900 KAR 5:020

APPROVED:

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Emily Whelan Parento  
Executive Director  
Office of Health Policy

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Date

APPROVED:

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Audrey Tayse Haynes  
Secretary  
Cabinet for Health and Family Services

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Date

900 KAR 5:020

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:**

A public hearing on this administrative regulation shall, if requested, be held on June 22, 2015, at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by June 15, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2105. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: 502-564-7905, Fax: 502-564-7573, [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Administrative Regulation Number: 900 KAR 5:020

Contact Person: Diona Mullins, (502) 564-9592

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation incorporates by reference the 2015-2017 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of 216B.010-216B.130 by incorporating by reference the 2015-2017 State Health Plan, revised May 2015. The 2015-2017 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.0440(2)(a)2.a. KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: The amendment incorporates by reference the 2015 - 2017 State Health Plan.
- (b) The necessity of the amendment to this administrative regulation: The amendment is necessary as KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.
- (c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the 2015 - 2017 State Health Plan.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the 2015 -2017 State Health Plan.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 115 certificate of need applications are filed annually.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities which submit certificate of need applications will be subject to the criteria set forth in the 2015-2017 State Health Plan.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications will be subject to the revised criteria set forth in the 2015-2017 State Health Plan.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
  - (a) Initially: No cost
  - (b) On a continuing basis: No cost
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.
- (9) TIERING: Is tiering applied? (Explain why or why not)  
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 5:020    Contact Person: Diona Mullins, 502-564-9592

1.    What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed health care facilities.
2.    Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.
3.    Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
  - (a)    How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.
  - (b)    How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated for state or local government.
  - (c)    How much will it cost to administer this program for the first year? None.
  - (d)    How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None  
Expenditures (+/-): None  
Other Explanation: None

COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY SERVICES  
OFFICE OF HEALTH POLICY

900 KAR 5:020

Summary of Material Incorporated by Reference

1. The 2015-2017 State Health Plan, revised May 2015, is incorporated by reference. The 2015-2017 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

- Cover page, revised edition date to May 2015 and revised title to 2015-2017 State Health Plan.
- Page ii, Table of Contents, revised to reflect new and deleted components of the State Health Plan and revised page numbers.
- Page iii, Purpose, date of State Health Plan changed to 2015-2017.
- Pages iii-iv, Technical Notes, revised #1 to clarify definition of ADDs; deleted #2-#8, #10, and #12- #13; revised #9 to state that utilization reports shall be available from the Office of Health Policy; and revised #11 to state that population estimates shall be obtained from the Kentucky State Data Center.
- After page iv, inserted new page headed Common Review Criteria, three (3) new common review criteria were added.
- Page 1, Acute Care, paragraph 4, clarified that the contiguous counties are Kentucky counties.
- Page 8, Comprehensive Physical Rehabilitation Beds, after criterion #5, add new criterion to state that notwithstanding criteria #1, 2, and 3, an applicant proposing to add rehab beds shall be consistent with the Plan if the applicant's rehab beds experienced 80% annual occupancy and select CMS Hospital Compare or Inpatient Rehabilitation Facility Quality Reporting Program quality measures are met.
- Page 12, Level II Special Care Neonatal Beds, criterion #9 added to state that an applicant for Level II beds which currently provides Level IV services shall not be required to have a written affiliation agreement with a provider who meets Level IV criteria.
- Page 12, Level III Special Care Neonatal Beds, revised criterion #3.b. to state

that a neonatologist shall be continuously available 24 hours per day and able to be on-site within 15 minutes. A neonatal APRN with training and skills specified in the Guidelines for Perinatal Care or a fellow in an approved Neonatal-Perinatal Medicine Fellowship shall be on-site and continuously available when a neonatologist is not on-site.

- Page 14, after criterion #3, inserted new criterion to state that an applicant for Level III beds which currently provides Level IV services shall not be required to have a written affiliation agreement with a provider who meets Level IV criteria.
- Page 31, Long-Term Care, added new criterion #5 to allow for transfer of licensed nursing facility beds to a licensed facility in another county if select review criteria are met.
- Page 32, heading changed to Home Health Agency and the definition of home health agency was revised.
- Page 33, added new criterion #4 which sets forth the requirements for an existing licensed hospital to establish home health services if select CMS Hospital Compare quality measures are met; new criterion #5 sets forth requirements for an existing HHA to expand if select CMS HHA Compare quality measures are met; new criterion #6 sets forth requirements for a Kentucky-based ACO or affiliated HHA to establish home health services; and new criterion #6 sets forth requirement for applicants to participate in the Cabinet's National Background Check Program.
- Page 37, deleted the Adult Day Health Care Program component of the State Health Plan.
- Page 40, Cardiac Catheterization Service, revised criterion #2 to delete the language regarding pilot programs and require applicants for therapeutic or comprehensive (diagnostic and therapeutic) catheterization programs to have a comprehensive cardiac surgical program. Applicant is required to demonstrate an unmet need for at least 200 additional therapeutic procedures and that approval of a new program will not reduce the volume of therapeutic procedures performed at each existing program within the planning area to fall below 200 therapeutic procedures annually.
- Page 49, deleted the Magnetic Resonance Imaging Equipment component of the State Health Plan.
- Page 48, Megavoltage Radiation Equipment, revised definition of megavoltage radiation therapy program.
- Page 48, Megavoltage Radiation Equipment, revised criterion #1.a. to state that the number of procedures performed in the proposed planning area averages at



least 4,000 per program with only 1 megavoltage radiation therapy unit and 8,000 per program with 2 or more units and added criterion #3 to address establishment of megavoltage radiation service which will be majority-owned by a hospital which is COC accredited as an academic comprehensive cancer program, a comprehensive community cancer program, an integrated network cancer program, or a pediatric cancer program.

- Page 49, Positron Emission Tomography Equipment, paragraph 5 revised to clarify that the planning area shall be comprised of the county of the proposal and all Kentucky contiguous counties.
- Page 53, deleted the Ambulance Service component of the State Health Plan.
- Page 54, Ambulatory Surgical Center, revised definition of an ambulatory surgery center to clarify that the licensure requirements of 902 KAR 20:106 and 902 KAR 20:101 shall be met.
- Page 54, Ambulatory Surgical Center, criterion #1 revised to clarify that the planning area shall be comprised of the county of the proposal and all contiguous Kentucky counties; and criterion 3 was revised to delete the requirement for the applicant to have a transfer agreement for the proposed center in place with a hospital.
- Page 55, criterion #5 added to address establishment of an ASC which will be majority owned by a hospital that meets select CMS Hospital Compare quality measures.
- Page 55, criterion #6 added to address establishment of an ASC by a physician-owned entity if specified criteria are met.
- Page 56, deleted the Chemical Dependency Treatment Beds component of the State Health Plan.
- Page 57, deleted the Outpatient Health Care Center component of the State Health Plan.
- Page 58, Private Duty Nursing Service, criterion #1 revised to allow 2 PDNAs (or HHAs providing PDNA services) in a county with population <50,000 and 4 PDNAs (or HHAs providing PDNA services) in a county with population of ≥50,000; revised criterion #2 to require participation in the Cabinet's National Background Check program; revised criteria #3 and #4 to allow establishment of PDNA to serve pediatric patients and Model II Waiver services if the proposed service is not currently provided by two (2) or more licensed agencies.

The total number of pages incorporated by reference for this administrative regulation is 59 pages.